IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/01/2003

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THE HONOURABLE Mr. JUSTICE P.K. MISRA

W.P.No.1810 of 2003
and
W.P.M.P.No.2249 of 2003

R. Ravi .... Petitioner

-Vs-

1. The Regional Transport Officer,
Salem - 7.

2. The Commissioner of Customs,
33, Rajaji Salai, Chennai - 1. .... Respondents

Writ petition filed under Article 226 of The Constitution of India
praying for the issue of writ of certiorarified mandamus as stated therein.

For Petitioner : Mr. N. Gopalakrishnan

For Respondents : Mr. Sanjay Ramaswami, G.A.

:O R D E R

Heard the learned counsel appearing for the petitioner and Mr.
Sanjay Ramaswami for respondents.

2. The petitioner has prayed for the issue of writ of
certiorarified mandamus for quashing the order dated 31.10.2002 in
R.No.80730/D1/2002 and for giving direction to the respondents to register the
vehicle bearing Chassis No.AW110052004 and Engine No.4A 0460522.

3. In a public auction dated 19.2.2002 held by the Customs
Department the petitioner had purchased Toyoto MR II Car, which had been
seized by the Customs Department at the time of importation, on the ground
that there was no bill of entry. Thereafter, the petitioner filed an
application before the respondent under Rule 57 in Form No.32. Under the
impugned order dated 30.10.2002, the petitioner was informed that he has to
move the Customs Department, the second respondent herein, to get the vehicle
registered in the name of the Customs Department and file an application
thereafter for transfer. This is being challenged by the petitioner.

4. Rule 47 and Rule 57 of the Central Motor Vehicles Rule 1989 (herein after called RULES) being relevant are extracted hereunder:

"Rule 47:(1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of seven days from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by
(a) sale certificate in Form 21.
(b) valid insurance certificate
(c) copy of the proceedings of the State Transport Authority or Transport Commissioner or such other authorities as may be prescribed by the State Government for the purpose of approval of the design in the case of a trailer or a semi-trailer;
(d) original sale certificate from the concerned authorities in Form 21 in the case of ex-army vehicles;
(e) proof of address by way of any one of the documents referred to in Rule 4;
(f) temporary registration, if any;
(g) road-worthiness certificate in Form 22 from the manufacturers Form -22A from the body-builders;
(h) custom's clearance certificate in the case of imported vehicles along with the licence and bond, if any; and
(i) appropriate fee as specified in Rule 81
(2) In respect of vehicles temporarily registered, application under sub-rule(1) shall be made before the temporary registration expires.

Rule 57: (1) The person who has acquired or purchased a motor vehicle at a public auction conducted by or on behalf of the Central Government or a State Government, shall make an application in Form 32 within thirty days of taking possession of the vehicle to the registering authority accompanied by
(a) the appropriate fee as specified in Rule 81;
(b) the certificates of registration and insurance; and
(c) the certificate or order confirming the sale of the vehicle in his favour duly signed by the person authorised to conduct the auction;
(d) certified copy of the order of the Central Government or State Government authorising the auction of the vehicle.

(2) Where the vehicle auctioned is a vehicle without any registration mark, or with a registration mark which on verification is found to be false, the registering authority shall, subject to the provisions of Section 44, assign a new registration mark to the vehicle in the name of the Department of the Central Government or State Government auctioning the vehicle and thereafter record the entries of transfer of ownership of the vehicle giving the name and address of the person to whom the vehicle is sold.

5. A perusal of Rule 47 shows that a person filing an application for registration of Motor Vehicle has to file such application in Form No.20 within a period of 7 days from the date of taking delivery of such vehicle excluding the period of journey. It further requires that such

application must be accompanied by Sales Certificate in From No.21. A bare perusal of the afore said Rule makes it clear that it has got no application to vehicles, which have been confiscated by Customs Department and the Department is not required to file any application for registration under Rule 47.

6. Rule 57 specifically relates to transfer of ownership of vehicle purchased in public auction. The application under Rule 57 has to be made in Form 32 within 30 days from the date of taking possession of vehicle and such application has to be accompanied by appropriate fees as specified under Rule 81, certific ates of registration and insurance and certificate of order confirming the sale of the vehicle duly signed by a person authorised to conduct auction and certified copy of the Central Government or State Government authorising the auction of the vehicle. However, Rule 57(1) is applicable if the vehicle, which is sold in auction is already registered. On the other hand, Rule 57(2) is specifically applicable to an auctioned vehicle, which is without any registration mark or which is having a false registration mark. In respect of such vehicle, the registering authorities are required to assign new registration mark to the vehicle under the name of the Department of the Central Government or State Government auctioning the vehicle and thereafter, record the entries of transfer of ownership of the vehicle giving the name and address of the person to whom the vehicle is sold. This process of assigning the new registration mark of a vehicle, having no registration mark or a false registration mark has to be undertaken on the basis of application made under Rule 57 in Form No.32 and there is no requirement of filing any separate application either by the Department or by the purchaser.

7. The aforesaid analysis makes it clear that the registering authority has committed illegality in calling upon the petitioner to apply to the Customs Department for getting the vehicle registered in the name of the Customs Department and to get it transferred in his name thereafter. Such an order is not contemplated under the Act or under any of the Rules.

8. In such view of the matter, the said order is quashed and the registering authority is directed to assign new registration mark on the vehicle in the name of the Customs Department of the Central Government and record the entries of transfer of ownership of vehicle in the name of the petitioner subject to compliance of all other formalities, if any. This should be done within a period of two weeks from the date of communication of the order.

9. The writ petition is allowed. Consequently, W.P.M.P.No.2247 of 2003 is closed.

Index:Yes
Internet:Yes
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To

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Salem - 7.

2. The Commissioner of Customs,
33, Rajaji Salai, Chennai - 1.